

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN JEFF PATTISON**, on February 7, 2003 at
8 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Jeff Pattison, Chairman (R)
Sen. Bill Tash, Vice Chairman (R)
Sen. Edward Butcher (R)
Rep. John Musgrove (D)
Sen. Linda Nelson (D)
Rep. Rick Ripley (R)
Sen. Debbie Shea (D)

Members Excused: None.

Members Absent: None.

Staff Present: Kelly Gorin, OBPP
Gary Hamel, Legislative Branch
Elaine Olsen, Committee Secretary
Doug Schmitz, OBPP

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: Department of Environmental Quality
Overview, 2/7/2003
Executive Action: Motion to draft LC

{Tape: 1; Side: A; Approx. Time Counter: 1 - 11}

Gary Hamel gave an overview of alternative Pay Plan 20, put in place by the Department of Environmental Quality(DEQ). Pay Plan 20 is a broadband, two-tiered process of competencies and pay bands which was implemented in an effort to recruit and retain qualified employees. The budget process to neutralize the fiscal impacts of the pay increases involves a series of negative decision packages(DP). The negative DPs reduce base operations by the like amount of the increase in personal services costs.

Gary Hamel stated when the budget "snapshot" was taken in June, the alternative pay plan was fully funded. At that time the Department's budget was \$2.5 million higher than the previous base. To offset this increase, DEQ has proposed reductions, primarily in operations or equipment. If the Legislature approves these reductions, the increase in personal services costs will be off-set with a commensurate decrease in operations cost. This results in a cost-neutral and permanent budget adjustment.

Gary Hamel said that if the reduction in personal services does not have a corresponding reduction in FTE, the budget reduction is short-term. If no FTE are eliminated with the reduction in personal services, those FTE will be fully funded when the "snapshot" is taken prior to the 2005 Legislature. Services may have to be reduced in future years to fund continued levels of increased pay.

Gary Hamel stated that for the pay plan to be cost-neutral, the reduction in expenditures must be permanent. Some of the proposed DPs related to Pay Plan 20 are similar to the proposed reductions, and those DPs might offset any reduction. **Gary Hamel** said funding options open to the Committee, related to funding Pay Plan 20, were listed on the handout.

EXHIBIT(jnh27a01)

{Tape: 1; Side: A; Approx. Time Counter: 11 - 17}

REP. MUSGROVE asked what would occur if the pay rates again fall below the market. **Gary Hamel** replied that with the alternative pay plan, once a pay raise is given, the pay raise stays. If the market pay rate for those positions falls, then new employees are hired at the lower level. Two employees can be doing the same work at different pay scales.

CHAIRMAN PATTISON asked for clarification on the Options Two and Three listed on Exhibit One. **Gary Hamel** said in Option Two the Committee could chose to approve all the negative DPs and reduce the FTE by the number necessary to fund the pay plan on an ongoing basis. The Committee could reduce operations costs by the amount necessary to fund the pay plan. In addition the Committee would then reduce the number of FTE by the equivalent amount which would negate the effect of the pay increase. The Department would be forced to utilize sources from other areas within the Department, not only to cover the lack of operations costs but also to address the lack of personal services resulting from the reduction in FTE.

Gary Hamel said Option Three would be to approve the negative DPs. The Committee could direct the Department to eliminate FTE equivalent to \$793,000 which is the portion of the reduction that the LFD feels is short-term in nature because personal services were applied to offset the increase.

CHAIRMAN PATTISON summarized by stating with the Pay Plan 20 reductions, the Department has left an FTE position open. The related personal services--vacation, sick pay, salary--have been eliminated, but the FTE is still in place. Option Number Three would eliminate the personal services and remove the FTE.

Gary Hamel said the difference between the options is that Option Number Two would reduce FTE equivalent to \$2.5 million, while the third option would reduce FTE equivalent to about \$793,000. Number Three would make the pay plan cost-neutral. Option Number Two would not only eliminate all the operations costs, but it would eliminate all of the FTE to an amount equivalent to the entire pay plan increase. Even though the employees would continue to be paid at the higher rate, the Department would have to find other sources to fund the pay increase.

{Tape: 1; Side: A; Approx. Time Counter: 17 - 20}

Jan Sensibaugh, Director, DEQ, said the Department budget was put together with the present law base adjustment as if the Department was not going to take the offsets for the increases caused by Pay Plan 20. The Department put forth negative DPs so the Committee could see exactly how the agency was proposing to fund the alternative pay plan. "We added with one, took away with the other, just so the Legislature could see that the Department was actually taking it away and hadn't buried the takeaway in the present law base adjustment," she said. **Director Sensibaugh** said that if the Committee approves the DPs on the operations' costs, the reductions are permanent. The agency is

committing to manage personal services costs without eliminating FTE. Understanding the Committee's concern that the personal services costs reduction are not permanent, the Department identified the equivalent FTEs that could be eliminated and would offset the personal services costs. DEQ would prefer to have the operations reduced and then reduce the equivalent FTE. Both FTE and personal services would have to be eliminated to make the reductions permanent.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 22}

Doug Schmitz said there is no statute requiring the Department to make reductions to meet a pay plan. The reductions that are being offered in multiple agencies in State government are a direct result of the Budget Director saying if agencies are adopting a broadband pay plan, reductions must be made. When the Legislature approves HB13, the normal pay plan bill, no reduction in personal services has been required. It appears that DEQ is being singled out when there are multiple agencies in State government that made that same transition.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 28}

Gary Hamel reviewed a handout on base adjustments. DEQ is requesting a number of base adjustments because the Department has vacant positions. The vacant positions mean a reduced level of spending and a smaller base. If, because of the alternative pay plan, the vacant FTE are filled, the Department would anticipate spending the full amount of authority given to them in the base year. The base budget does not reflect the full funding necessary for the FTE that are now filled.

EXHIBIT (jnh27a02)

Gary Hamel stated that the base adjustments requested by the Department reflect the estimated amount needed in the upcoming biennium if all vacant FTE are filled. If vacant FTE are filled because of the alternative pay plan, the FTE would be funded but the associated operations costs would not be funded.

{Tape: 1; Side: A; Approx. Time Counter: 28 - 30}

CHAIRMAN PATTISON stated he had spoken with Director Sensibaugh and asked for her assistance in clarifying the DEQ funding issues related to specific programs. He said he had requested that the Director address the impact of Legislative actions. Issues related to protecting the State's environment are very critical to Montana.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 13}

Director Sensibaugh presented a handout outlining DEQ programs. The exhibit indicates those programs that were established by state law and are implemented by DEQ. Some programs are federally delegated which means DEQ has adopted federal language into state law. Some programs are federally delegated and contain state-only provisions. The exhibit outlines the funding sources for each program.

EXHIBIT (jnh27a03)

CHAIRMAN PATTISON asked if there are activities that the Department is handling in the Hazardous Waste Program that could be considered over and above what the federal government requires. **Director Sensibaugh** said that DEQ implements the federal HazWaste Program but in addition, the agency does outreach and compliance assistance. Regulated industry wants the State to manage these programs because the federal government does not do compliance assistance, technical assistance, and education. Their program is strictly regulatory.

CHAIRMAN PATTISON asked what it costs the State to manage the program. **Steve Welch, DEQ**, said the fees total \$133,000, RIT funding is \$869,000, and grants are \$1.26 million.

{Tape: 1; Side: B; Approx. Time Counter: 13 - 18}

SEN. SHEA asked about the asbestos program. **Director Sensibaugh** replied that the asbestos is a separate delegated federal program. DEQ has taken on the implementation of the federal requirements. The program is funded with General Fund, federal grants, and fees. Matching funds are required. The State is involved with public outreach, compliance assistance, and education to assist the people. These efforts are not a part of the federal requirements.

Director Sensibaugh described the Energy and Economic Analysis program. These programs are not mandated by law, but the Department has been given some charge by the Legislature and the Governor's office to perform the activities. The programs are funded by General Fund. **CHAIRMAN PATTISON** asked for the source of the "charge." **Art Compton, DEQ**, said that the Environmental Quality Council(EQC) has given the Department direction to perform the energy and economic analysis. In addition, the agency handles the EQC's biennial energy recording and forecasting. The Department researches and completes two published reports for EQC. DEQ is responsible for a host of

energy economic analyses that are done at the request of the executive budget office. **SEN. TASH** said the reporting is required by statute.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 22}

Tom Livers, DEQ, said the Energy and Economic Analysis Unit is funded with General Fund. Those funds are also used to match the Federal Energy Grants. The match is 18 percent General Fund and 82 percent federal.

{Tape: 1; Side: B; Approx. Time Counter: 22 - 30}

SEN. NELSON asked what services the DEQ provides through the radon program. **Tom Livers** said DEQ administers Federal and State Radon Control Acts. Activities are primarily informational in nature. About half of the funds are pass-through to counties that operate radon information programs. The DEQ does some training in construction mitigation efforts. Funding was originally a match of \$50,000 of General Fund to EPA dollars, but in October, the Department eliminated the General Fund portion and negotiated with the EPA to use the Performance Partnership Grants (PPG).

SEN. BUTCHER asked if the federal funding could be better used in another area or program. He said he would not place radon education at the top of a priority list. **Tom Livers** said DEQ has gone through a priority process. The Department does not have the ability to move those funds to other activities. **SEN. BUTCHER** asked if the PPG funding that had replaced the General Fund match could be better used elsewhere. **Ann Danzer, DEQ**, said the Department is using in-kind services as a funding match when possible.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 3}

Director Sensibaugh said when the Department receives funding through a PPG, they are supposed to be provided the flexibility by the federal government to spend that money on the State's top priority activities. At this time, that flexibility is not being allowed.

{Tape: 2; Side: A; Approx. Time Counter: 3 - 7}

SEN. BUTCHER asked if the stonewalling problem is caused by bureaucrats worried about their jobs in DC. **Director Sensibaugh** said the Department is working with federal agencies in Washington, DC, rather than officials in the Region Eight EPA

office. **CHAIRMAN PATTISON** suggested that the Committee would work with the Department to see if additional creative funding possibilities might exist in an effort to consolidate funding and to maximize federal dollars.

REP. MUSGROVE asked if radon standards for households had been relaxed. **Tom Livers** said that there is a bill in the Legislature which would raise the acceptable levels for radon.

{Tape: 2; Side: A; Approx. Time Counter: 8 - 16}

CHAIRMAN PATTISON stated his concern for streamlining the programs, the funding, and the focus of the Department. He suggested that a Committee bill might be needed to accomplish that. **Director Sensibaugh** said that she did not feel statutory changes were needed. In the Total Managed Daily Limits (TMDL) program, the State requires a voluntary program. Reaching a consensus of the landowners in each of the State's watersheds is time-consuming and very difficult. The Department will use computer modeling where possible and will continue to work to establish a cooperative work effort with Montana State University (MSU).

{Tape: 2; Side: A; Approx. Time Counter: 16 - 22}

SEN. TASH said that the TMDL project presents a lot of opportunity for collaborative practice. In the Big Hole River watershed, the landowners were successful in recruiting university interns to assist with the TMDL fieldwork. He suggested applying a combination of computer modeling and fieldwork.

{Tape: 2; Side: A; Approx. Time Counter: 22 - 30}

REP. RIPLEY commented that the cooperative effort with MSU was a good idea, and he acknowledged that Committee was asking a lot of Director Sensibaugh.

CHAIRMAN PATTISON asked Director Sensibaugh about the Underground Storage Tank program, stating that his constituents have expressed a lot of concern about the program and some of the decisions. He inquired about the actions of the Petroleum Release Compensation Board. **Director Sensibaugh** said that the Board is administratively attached to the agency. The Board makes determinations on the eligibility of individuals for assistance with underground tank cleanup. The Board tends to be very liberal with requests for assistance with petroleum tank cleanup.

Director Sensibaugh stated that the Legislative Audit Committee felt that the Board was approving claims in direct contradiction to the law. **Director Sensibaugh** said that as the Director, she felt it would be better to have the Board of Environmental Review as the appellate body for decisions related to the underground tank cleanup assistance.

Director Sensibaugh said the Legislative Auditor is doing a performance audit of the program. That audit will be done in late March or April. She said she had decided not to come forward with any recommendations until that audit report is final. **SEN. TASH** asked if the Committee should address the issue of the Board using contingency language.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 3}

Director Sensibaugh said she would encourage the Committee to visit with the Auditor. **REP. RIPLEY** asked what the time frame would be for a Committee bill. **SEN. TASH** said the time limit could be extended through a suspension of the rules. **Doug Schmitz** said the Committee could request a bill in LC form until they wanted to move ahead.

Motion/Vote: **REP. PATTISON** moved that A LC DRAFT BE PROPOSED FOR THE PURPOSE OF ADDRESSING DEQ ISSUES DO PASS. Motion carried unanimously.

{Tape: 2; Side: B; Approx. Time Counter: 3 - 9}

CHAIRMAN PATTISON asked if counties could take over the Subdivision Program. **Director Sensibaugh** said that the Legislative Auditor recommended the program be turned over to the counties. The counties did not want the program turned over to them because they do not have enough resources to be able to hire their own engineers and sanitarians for subdivision review and approval. The Auditors felt they could provide a mechanism for the small counties to charge fees, but in cases where a county has one subdivision review a year, the fee for that applicant would be huge. The large counties were against it because they prefer to have DEQ make the decisions.

Director Sensibaugh said that **REP. LEWIS** was sponsoring a bill that would have some of the minor subdivision work go to the counties. DEQ would retain federally-delegated programs for the review of the public water supply and waste water system.

SEN. BUTCHER asked if it would be possible for the counties to form health districts in cooperation with other counties.

Director Sensibaugh said she felt that it could be structured so that small counties could access the resources of the larger counties. **SEN. BUTCHER** asked about health districts. **Director Sensibaugh** said there are seven large counties that have health officers.

Doug Schmitz said that he had served as a county commissioner and worked on approving subdivisions. The standardization of the rules by the State was invaluable. Contracting with adjoining larger counties creates the situation where the county has to decide if they want to comply with the larger county's rules.

{Tape: 2; Side: B; Approx. Time Counter: 9 - 16}

CHAIRMAN PATTISON asked Director Sensibaugh how she would approach streamlining the Subdivision Program. **Director Sensibaugh** said the program is a state-only program. The most effective way would be to give the counties the responsibility and the authority to review and approve those small individual septic tank and well subdivisions.

CHAIRMAN PATTISON addressed the RIT funding and how to maintain the integrity of the Fund. **Director Sensibaugh** said the Department gets RIT funds from three accounts: HazWaste CERCLA and EQPL which fund activities in DEQ only. The agency also receives funds from the Reclamation and Development account which is shared with Department of Natural Resources and Conservation(DNRC). Because of the potential shortage in the HazWaste CERCLA and EQPL accounts, the Department worked with SEN. LAIBLE on SB103. If there is a shortfall in either of those accounts, DEQ can borrow money from the orphan share account.

Director Sensibaugh said that the magnitude of the shortfall in the Reclamation and Development fund was not being addressed through legislation. Along with DNRC, DEQ is identifying where they can cut back on the use of Reclamation and Development funds. The agency has offered to give up \$800,000 that is statutorily available to DEQ for the next biennium for funding abandoned mine cleanup. The agency has looked at some of the programs funded by RIT and has suspended those projects until that money is recovered.

{Tape: 2; Side: B; Approx. Time Counter: 16 - 22}

Gary Hamel stated he was projecting a \$193,000 ending fund balance in HazWaste CERCLA. The Committee could make any appropriation that contains funding from HazWaste CERCLA contingent on the passage of SB103. If SB103 does not pass, then

that part of the DP and therefore HB2 would be reduced by that amount. If SB103 does pass, HazWaste CERCLA and EQPF should be fine.

Gary Hamel said the Reclamation and Development fund is a different issue. While the Department may attempt to maintain the integrity of the fund, they can spend all the appropriations that have been approved. The danger is greater that the fund will be in a negative position. Legal appropriations, even those that have not been spent, have to be counted against that account.

Gary Hamel said Renewable Resources fund is projected to be negative. **Director Sensibaugh** said DEQ is working with OBPP and DNRC on a management plan to deal with the projected shortfall.

CHAIRMAN PATTISON asked how critical the work on the State Super Fund sites is. **Director Sensibaugh** said that State Super Fund sites are highly contaminated. They do not make the federal Super Fund list, but communities are very concerned about the sites. EGPF pays the costs for the DEQ staff to complete the initial evaluation, identify the liable parties, and to initiate work with the liable parties to get the reclamation plans in place. DEQ recovers costs from the liable parties, and those monies go back into EQPF which is a self-sustaining account. The liable parties don't always pay their bills.

SEN. SHEA asked for the source of the Reclamation and Development part of the RIT fund. **Gary Hamel** said the RIGWA tax and an applicable portion of Oil and Gas feed the fund. With the RIGWA portion, a portion of the tax goes for groundwater assessment. Fifty percent of the remainder goes to Reclamation and Development, and the rest is split into Natural Resource Workers' Scholarships and some into orphan share. The initial \$400,000 of Oil and Gas goes into Coal Bed Methane Protection. The remainder is split 50/50 with Reclamation and Development and orphan share. Interest from RIT is generated and is split into a number of pieces with some direct allocations going to Groundwater Assessment. Some funds go to MSU, FWP gets some of the interest, and then Reclamation and Development receives 45 percent of any remaining interest.

{Tape: 2; Side: B; Approx. Time Counter: 22 - 30}

SEN. SHEA asked if the low fund balance had anything to do with the diminishment of the natural resource industry. When a trust exists, there is a sense of security that the trust can generate revenue from year-to-year. It appears money is not going into

the Fund. **Gary Hamel** said that there are two components to consider. One is the diminishment of natural resource production resulting in less income being produced. Also, the interest is down slightly. It's a large trust, and the various portions have created a relatively stable income source. He stated that he felt the Legislature could increase the RIGWA and Oil and Gas tax. The appropriations could be cut.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 5}

Doug Schmitz said that the OBPP budget submitted last fall was close to having the funds balance. The long-term liability was not included. Grants that the previous Legislature had approved in HB6 or HB7 are still being carried on the books as a liability against these funds.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JEFF PATTISON, Chairman

ELAINE G. OLSEN, Secretary

JP/EGO

EXHIBIT (jnh27aad)